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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/072,229	02/11/2002	George R. Royer		2290

7590 11/07/2003  
George R. Royer  
2137 Ragan Woods Drive  
Toledo, OH 43614

EXAMINER
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LEWIS, KIM M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 11/07/2003

4

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/072,229

Applicant(s)

ROYER, GEORGE R.

Examiner

Kim M. Lewis

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 13 January 2003 and 28 May 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: *Detailed Action*.

## **DETAILED ACTION**

### ***Response to Amendment***

1. The preliminary amendment filed on 1/14/03 has been received and made of record in the application file wrapper. As requested, claims 4-6 have been added. However, since the original specification only included one claim, the new claims have been renumbered 2-4.

### ***Drawings***

2. The drawings are objected to because the figures include captions. The captions if necessary should be placed in the specification. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Specification***

3. The use of the trademark Band Aid<sup>®</sup> has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner, which might adversely affect their validity as trademarks.

4. The disclosure is objected to because of the following informalities:

Art Unit: 3761

Page 6, lines 6-7 should be deleted and replaced after the title, as the first line of the description by the following phrase: --This application claims the benefit of US Provisional Application No. 60/306,393, filed July 29, 2001.--;

Page 9, line 26, the term "whatever" should be replaced by --or the like--;

Page 10, line 8, "affixed" should read --affixed--; and

Page 10, line 9, after "cover" insert --,. Appropriate correction is required.

### ***Claim Objections***

5. Claims 1-4 are objected to because of the following informalities:

Claim 1, line 1, before "member" insert --the--;

Claim 2, line 2, after "individual" insert --,--;

Claim 3, line 3, after "individual" insert --,--;

Claim 3, line 5, "portions" should read --portion--;

Claim 4, line 2, after "individual" insert --,--; and

Claim 4, line 8, "said flexible bandage member" should read --said flexible member--.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Art Unit: 3761

7. Claims 1 and 3 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8. Regarding claim 1, the word "means" is preceded by the word(s) "adhesive" in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word(s) preceding "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967).

As regards claim 3, the claim recites, "...said opening being adapted to received medication through said opening from the upper surface portion to pass through said opening in said lower surface portion...". It appears as if the applicant is claiming an opening in the upper surface portion and an opening in the lower surface portion. If this is the case the applicant has not positively recited two openings. If this is not the case, the applicant should amend the claim language so that it reads as if there is only one opening.

Regarding claim 4, the word "means" is preceded by the word(s) "perimeter" in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word(s) preceding "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967).

Moreover, the examiner is unclear as to what is meant by extending away from the lower surface portion since in each of Figs. 1-4, lower surface (60) does not have an

Art Unit: 3761

element extending away therefrom. As such, the examiner is not able to ascertain the element that applicant is claiming.

Additionally, it has been held that where the metes and bound of a claim are indefinite, it is improper to base a rejection on speculation as to the meaning of the claim. *In re Steele*, 305 F.2d 858, 134 USPQ 292 (CCPA 1962).

### ***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,641,643 ("Greer").

Regarding claims 1-3 Greer anticipates the claimed invention. More specifically, Greer discloses a resealing skin bandage comprising a flexible body (12), which reads on applicant's "band aid member", having first and second opposing surfaces (abstract, col. 2, lines 51-52), an adhesive (18) disposed in the second surface for adhering the body to the skin of a user, and an opening/spatial channel (26) extending from the first surface to the second surface (col. 2, lines 65-66). The opening is **capable** of receiving a medicament (col. 3, lines 45-49).

Art Unit: 3761

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent Nos. 5,086,763 and 5,702,356 disclose bandages having openings and covers.

12. The following are suggested formats for either a Certificate of Mailing or Certificate of Transmission under 37 CFR 1.8(a). The certification may be included with all correspondence concerning this application or proceeding to establish a date of mailing or transmission under 37 CFR 1.8(a). Proper use of this procedure will result in such communication being considered as timely if the established date is within the required period for reply. The Certificate should be signed by the individual actually depositing or transmitting the correspondence or by an individual who, upon information and belief, expects the correspondence to be mailed or transmitted in the normal course of business by another no later than the date indicated.

### **Certificate of Mailing**

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

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Alexandria, VA 22313-1450

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(Date)

Typed or printed name of person signing this certificate:

\_\_\_\_\_

Signature: \_\_\_\_\_

### **Certificate of Transmission**

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. (703)\_\_\_\_\_ - \_\_\_\_\_ on \_\_\_\_\_.  
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\_\_\_\_\_

Art Unit: 3761

Signature: \_\_\_\_\_

Please refer to 37 CFR 1.6(d) and 1.8(a)(2) for filing limitations concerning facsimile transmissions and mailing, respectively.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim M. Lewis whose telephone number is 703.308.1191. The examiner can normally be reached on Monday to Wednesday from 5:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on 703.308.1957. The fax phone numbers for the organization where this application or proceeding is assigned are 703.872.9306 for regular communications and 703.872.9306 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.0858.

A handwritten signature in black ink, appearing to be 'Kim M. Lewis', with a stylized flourish at the end.

**Kim M. Lewis  
Primary Examiner  
Art Unit 3761**

kml  
November 4, 2003



